IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 793 of 1997

in

SPECIAL CIVIL APPLICATIONNo 3401 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MANGLESHWAR EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MS SEJAL K MANDAVIA for Appellant
MR ST MEHTA, AGP, for Respondents

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 24/03/98

ORAL JUDGEMENT

1. Admitted. Mr. S.T. Mehta, learned Assistant Government Pleader, appears and waives service of notice

of admission on behalf of the respondents. In the facts and circumstances, the matter is taken up today for final hearing.

2. This appeal is filed against an order passed by the learned Single Judge summarily dismissing Special Civil Application No.3401 of 1997, on April 30, 1997. It was observed by the learned Single Judge that there was deficiency in attendance of students and the question as to whether certain students were studying in the appellant-school or not could be said to be a question of fact, which could not be investigated and decided under Article 226 or 227 of the Constitution.

3. Miss Mandavia, learned counsel for the appellant raised various contentions. She submitted that only on the basis of inspection and checking in August 1995 on four occasions, i.e. on 6th August, 8th August, 9th August and 25th August, a decision was taken which was not in consonance with the provisions of law. She further submitted that grant for additional Peon was not sanctioned on the ground that, though, strength of the students was less than 100, by manipulating and manoeuvreing the register, it was shown to be more than 100. The school was, thus, deprived of a legitimate benefit of grant for a second peon. Thirdly, it was submitted that, though documentary evidence was produced and relied upon before the authorities, it was not considered in its proper perspective. Regarding total strength in all the three classes - 8th, 9th and 10th as 99, it was submitted that the said action was not taken by the institution voluntarily but as per the order and direction issued by the authorities, that the register was corrected by reducing the figure to 99.

4. Mr. Mehta, on the other hand, submitted that the action taken by the authorities and confirmed by the learned Single Judge was in accordance with law. He submitted that, after inspection, the action was taken. He further submitted that, looking to the final order passed by the Commissioner (respondent No.1 herein), it is clear that he has not directed to deduct the grant only on the basis of allegation levelled against the school but a direction is issued to consider average attendance for the whole year and to take an appropriate action. No grievance can be made against such an order. He, therefore, submitted that the appeal deserves to be dismissed.

5. In our opinion, the appeal deserves to be partly allowed. It was the case of the appellant that only on

four days and that too, in month of August, officials of the respondents visited the school and made a report. It is also clear that the authorities were to consider average attendance as is reflected in the final order passed by the Appellate Authority. Now, before that, an action was already taken of deduction of some grant. It is true, no doubt, that as regards grant of students studying in 8th, 9th and 10th, a direction was issued to consider average attendance of the whole year. But an order deducting 25% grant passed by the District Education Officer vide his order dated 9th October, 1996 was held to be legal and valid. Similarly, an order deducting 100% grant for additional Peon was also confirmed. To that extent, in our opinion, the order requires to be set aside.

6. Our attention was also invited by Ms. Mandavia to a decision of a Division Bench of this Court in Letters Patent Appeal No.803 of 1997, decided on January, 29, 1998. Almost in similar circumstances, the Division Bench allowed the appeal of the school and directed the Appellate Authority "to reconsider the matter".

7. In our opinion, the ratio laid down in that case also applies to the facts of the present case. We, therefore, set aside the order passed by the District Education Officer and confirmed by the Commissioner and the Commissioner (Appellate Authority) is directed to decide the matter afresh in the light of the observations made hereinabove within six weeks from the date of receipt of this order. In the facts and circumstances of the case, no costs. Direct service permitted.

...

gt